

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**SETH N. RANDALL** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830973  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Years 2009, 2016 and 2017. :

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Petitioner, Seth N. Randall, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2009, 2016 and 2017.

On March 23, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Daniel Schneider, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by April 24, 2023, which date began the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

***FINDINGS OF FACT***

1. Petitioner, Seth N. Randall, filed a petition with the Division of Tax Appeals on May 9, 2022.
2. The petition lists Sean J. Randall as petitioner's representative.

3. The petition is signed by Sean J. Randall, who is identified as petitioner's brother, but the petition does not contain a valid power of attorney or any other authorization for Sean J. Randall to act on behalf of petitioner.

4. The petition included a copy of: i) a conciliation order dismissing request, CMS No. 000337998, for 2009 (conciliation order) that references assessment number L-040401731, issued by the Division of Taxation (Division) on April 15, 2022; and ii) a copy of a consolidated statement of tax liabilities, dated December 17, 2021, pertaining to assessment numbers L-040401731 (2009), L-053732066 (2016) and L-053732067 (2017), issued to petitioner by the Division.

5. The petition does not include any statutory notice for the years 2016 and 2017.

6. On August 18, 2022, the Division of Tax Appeals made a written request to petitioner for him to supply statutory notices for the years 2016 and 2017. Additionally, the Division of Tax Appeals noted that Seth J. Randall did not appear to qualify as a representative on behalf of petitioner. The letter further provided that, pursuant to 20 NYCRR 3000.2 (a) (3), if petitioner was incapable of filing a petition or appearing on his own behalf, he would need to provide a written statement indicating this fact. Otherwise, petitioner is required to sign the petition himself. To date, petitioner has not signed the petition nor provided written documentation of any incapacity.

7. On March 23, 2023, the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner. The notice of intent stated, in sum, that the petition filed was not in proper form. Specifically, petitioner neglected to include a legible copy of an order from a conciliation conferee for the years 2016 and 2017, if issued; if no such order was

previously issued, a legible copy of a statutory notice being protested for tax years 2016 and 2017. Without attaching or identifying the notices at issue, the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition. Additionally, since there is no valid power of attorney and the petition did not indicate that petitioner was incapacitated, petitioner's brother was not qualified to represent petitioner.

8. On April 19, 2023, in response to the notice of intent, the Division of Taxation (Division) submitted a letter stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner for tax years 2016 and 2017, the petitioner's brother signed the petition, and the power of attorney was not submitted pursuant to 20 NYCRR 3000.2 [sic] the Division is in agreement with the proposed dismissal.”

9. Petitioner did not respond to the notice of intent.

### ***CONCLUSIONS OF LAW***

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation and Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner's request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of a petition . . . protesting any written notice of the division of taxation which has advised the

petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]).

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.” In this case, no statutory notice was attached for the years 2016 and 2017.

C. Section 3000.3 (b) of the Rules and Regulations of the Tax Appeals Tribunal describes the requirements to the form of a petition. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain “the signature of the petitioner or the petitioner’s representative.”

D. Pursuant to 20 NYCRR 3000.2 (a) (2), a taxpayer may be represented by: (i) an attorney-at-law licensed to practice in New York State; (ii) a certified public accountant duly qualified to practice in New York State; (iii) an enrolled agent enrolled to practice before the Internal Revenue Service; or (iv) a public accountant enrolled with the New York State Education Department. An attorney, certified public accountant or licensed public accountant authorized or licensed to practice in any other jurisdiction may represent a petitioner after receiving written permission from the Secretary of the Tax Appeals Tribunal (*see* 20 NYCRR 3000.2 [a] [4]).

E. In this case, the petition was signed by Sean J. Randall, who is identified as petitioner’s brother. However, since there is no valid power of attorney and the petition did not indicate petitioner’s incapacity to file a petition or appear on his own behalf, Sean J. Randall is

not qualified to represent petitioner.

Pursuant to 20 NYCRR 3000.3 (b) (7), a petition must include the signature of the petitioner or the petitioner's representative. Since petitioner did not sign the petition, it is not in proper form.

F. On August 18, 2022, the Division of Tax Appeals made a written request asking petitioner to correct the deficiencies in the petition. He failed to do so. Where petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d]). Such notice of intent was issued on March 23, 2023. Petitioner failed to respond to the notice of intent.

As the petition was not filed in proper form contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]; *see also Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

G. It is ORDERED, on the motion of the supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York  
July 20, 2023

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE